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Request for the inclusion of an item in the provisional agenda of the sixty-fourth session

Observer status for the International Humanitarian Fact-Finding Commission in the General Assembly

Letter dated 1 July 2009 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General

In accordance with rule 13 of the rules of procedure of the General Assembly, I have the honour to request the inclusion in the provisional agenda of the sixty-fourth session of the General Assembly of an item entitled "Observer status for the International Humanitarian Fact-Finding Commission in the General Assembly".

In accordance with rule 20 of the rules of procedure of the General Assembly, an explanatory memorandum (annex I) in support of the above request and a draft resolution (annex II) are attached.

It would be appreciated if this note and its annexes could be circulated as a document of the General Assembly.

(*Signed*) Peter **Maurer**
Ambassador
Permanent Representative

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Annex I

Explanatory memorandum

1. The International Humanitarian Fact-Finding Commission (IHFFC) has been constituted in 1991 in accordance with article 90 of the Protocol Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of Armed Conflict (Protocol I). IHFFC is a permanent international body whose main purpose is to investigate allegations of grave breaches and serious violations of international humanitarian law, with the agreement of all parties which may be expressed in advance by a unilateral declaration recognizing its competence or ad hoc in a specific case. IHFFC is thus an essential mechanism to help States to ensure that international humanitarian law is implemented and respected during times of armed conflict. IHFFC can also, upon request of all parties involved, facilitate, through its good offices, the restoration of an attitude of respect for international humanitarian law.

2. The Commission is composed of 15 highly qualified experts from different fields acting in their personal capacity and elected for a term of office of five years by the 71 States that have recognized the competence of IHFFC. The number of States parties has more than doubled in the last seven years; it includes more than one third of the parties to Protocol I. All continents are represented. A list of States that have recognized the competence of IHFFC is found in the appendix.

3. The seat of IHFFC is in Berne. In its capacity as the depositary of the Geneva Conventions and their additional Protocols, Switzerland runs the secretariat of IHFFC.

4. The Commission has established its own rules of procedure (art. 90, para. 6, of Protocol I) and Operational Guidelines. It has adopted and continues to update its contingency planning for inquiries which enables it to start inquiries on short notice. In the case of an inquiry, a chamber of five members will be appointed by the President of IHFFC in consultations with the parties concerned. The parties to the conflict may appoint an ad hoc member.

5. Since the establishment of IHFFC in 1991, it has not received any fact-finding mandate because there has not been any armed conflict where indeed all parties to it had recognized the obligatory competence of the Commission or where all parties have requested IHFFC to act. The essential prerequisite for IHFFC to be able to fulfil its function, thus, is an effective possibility to obtain this agreement. For this purpose, the presence of IHFFC in those forums and bodies where the solution of conflicts, including allegations of violations of international humanitarian law in the course of these conflicts, are discussed is important. Having an observer status in the General Assembly would greatly enhance the possibility of this presence, and therefore enable IHFFC to better perform the functions assigned to it by international humanitarian law.

6. There is a need for fact-finding in relation to international humanitarian law, as is shown by the very existence of fact-finding activities undertaken by different institutions, mainly decided upon ad hoc. IHFFC has a distinct role to play in these various and diverse fact-finding activities, possessing certain particular characteristics distinguishing it from other institutions, and thus providing it an

added value. These are confidentiality, impartiality and the flexibility of the procedure which can be adapted to the wishes of the parties.

7. In its decision 49/426, the General Assembly decided that the granting of observer status in the General Assembly should in the future be confined to States and to those intergovernmental organizations whose activities cover matters of interest to the General Assembly. IHFFC is an intergovernmental organization because:

- It has been established pursuant to an international treaty, namely Protocol I
- It is elected by States, namely those States having recognized its obligatory competence under article 90 of Protocol I
- It is financed by these same States
- Its secretariat is provided by a State (Switzerland).

8. The fact that IHFFC is composed of experts elected in their personal capacity does not change the fact that it has been established by States. A precedent which is relevant in this respect is the International Tribunal for the Law of the Sea. As an international tribunal it is composed of individuals enjoying judicial independence, but it is nevertheless an intergovernmental institution. It has obtained observer status after the adoption of the General Assembly decision mentioned above, that is, in applying the criteria set up by that decision (see General Assembly resolution 51/204).

9. Clearly, the activities of IHFFC cover matters which are of interest to the Assembly. The Assembly has dealt with respect for, and the implementation of, international humanitarian law in various contexts in particular in the framework of the biennial item "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts". The role of IHFFC in this field has been expressly recognized by the General Assembly. In a number of resolutions, the Assembly has not only stressed, in preambular paragraphs, the possibility of making use of IHFFC, but has also called upon States to recognize the competence of the Commission (see resolutions 55/148, 57/14 and 59/36). This pronouncement has been reinforced by resolutions 61/30 and 63/125.

10. Ensuring a better implementation of international humanitarian law has been a constant concern of the General Assembly. In granting observer status to IHFFC, it would strengthen one of the tools which exist under international humanitarian law to heed that concern.

Appendix

States accepting the competence of the International Humanitarian Fact-Finding Commission based on article 90 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of the Victims of International Armed Conflicts of 8 June 1977 (Protocol I) (in chronological order)

As at 1 June 2009

	State	*Date of recognition*		*State*	*Date of recognition*
1.	Sweden	31 August 1979	25.	Togo	21 November 1991
2.	Finland	7 August 1980	26.	United Arab Emirates	6 March 1992
3.	Norway	14 December 1981	27.	Slovenia	26 March 1992
4.	Switzerland	17 February 1982	28.	Croatia	11 May 1992
5.	Denmark	17 June 1982	29.	Seychelles	22 May 1992
6.	Austria	13 August 1982	30.	Plurinational State of Bolivia	10 August 1992
7.	Italy	27 February 1986	31.	Australia	23 September 1992
8.	Belgium	27 March 1987	32.	Poland	2 October 1992
9.	Iceland	10 April 1987	33.	Bosnia and Herzegovina	31 December 1992
10.	Netherlands	26 June 1987	34.	Luxembourg	12 May 1993
11.	New Zealand	8 February 1988	35.	Rwanda	8 July 1993
12.	Malta	17 April 1989	36.	Madagascar	27 July 1993
13.	Spain	21 April 1989	37.	The former Yugoslav Republic of Macedonia	1 September 1993
14.	Liechtenstein	10 August 1989	38.	Brazil	23 November 1993
15.	Algeria	16 August 1989	39.	Guinea	20 December 1993
16.	Russian Federation	29 September 1989	40.	Bulgaria	9 May 1994
17.	Belarus	23 October 1989	41.	Portugal	1 July 1994
18.	Ukraine	25 January 1990	42.	Namibia	21 July 1994
19.	Uruguay	17 July 1990	43.	Slovakia	13 March 1995
20.	Canada	20 November 1990	44.	Cape Verde	16 March 1995
21.	Germany	14 February 1991	45.	Czech Republic	2 May 1995
22.	Chile	24 April 1991	46.	Romania	31 May 1995
23.	Hungary	23 September 1991	47.	Mongolia	6 December 1995
24.	Qatar	24 September 1991	48.	Colombia	17 April 1996

	State	*Date of recognition*		*State*	*Date of recognition*
49.	Argentina	11 October 1996	61.	Cyprus	14 October 2002
50.	Tajikistan	10 September 1997	62.	Cook Islands	7 November 2002
51.	Lao People's Democratic Republic	30 January 1998	63.	Democratic Republic of the Congo	12 December 2002
52.	Paraguay	30 January 1998	64.	Tonga	20 January 2003
53.	Greece	4 February 1998	65.	Mali	9 May 2003
54.	United Kingdom of Great Britain and Northern Ireland	17 May 1999	66.	Republic of Korea	16 April 2004
55.	Ireland	19 May 1999	67.	Burkina Faso	24 May 2004
56.	Panama	26 October 1999	68.	Japan	31 August 2004
57.	Costa Rica	2 December 1999	69.	Montenegro	2 August 2006
58.	Lithuania	13 July 2000	70.	Monaco	26 October 2007
59.	Trinidad and Tobago	20 July 2001	71.	Estonia	20 February 2009
60.	Serbia	16 October 2001			

Annex II

Draft resolution

Observer status for the International Humanitarian Fact-Finding Commission in the General Assembly

The General Assembly,

Wishing to promote cooperation between the United Nations and the International Humanitarian Fact-Finding Commission,

1. *Decides* to invite the International Humanitarian Fact-Finding Commission to participate in the sessions and the work of the General Assembly in the capacity of observer;

2. *Requests* the Secretary-General to take the necessary action to implement the present resolution.